

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Citizens Telecommunications Company	)	
of North Dakota	)	
	)	
Nemont Telephone Cooperative, Inc.	)	
	)	
Missouri Valley Communications, Inc.	)	CC Docket No. 96-45
	)	
Reservation Telephone Cooperative	)	
	)	
Joint Petition for Waiver of the Definition of "Study Area"	)	
Contained in Part 36, Appendix—Glossary of the	)	
Commission's Rules	)	
	)	
Petition for Waiver of Section 61.41(c)(2)	)	
Section 69.3(e)(11) and 69.605(c) of the	)	
Commission's Rules	)	

**NATIONAL TELECOMMUNICATIONS COMMISSION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> hereby submits its comments in response the Federal Communications Commission's (Commission's or FCC's) public notice seeking comment on the subject of the joint petition filed, October 29, 2002 by Nemont Telephone Cooperative, Inc. (Nemont), Missouri Valley Communications, Inc. (MVC)<sup>2</sup>

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<sup>1</sup> NTCA is a non-profit corporation established in 1954 and represents 546 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Communications Act of 1934, as amended (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> Missouri Valley Communications (MVC) is 50% owned by Nemont and 50% owned by Valley Telecommunications, both average schedule companies. Valley is 100% owned by Nemont. MVC was created specifically to purchase and operate the Williston exchange from Citizens (approximately 9349 access lines).

and Reservation Telephone Cooperative (RTC) and Citizens Telecommunications Company of North Dakota (Citizens).<sup>3</sup>

## **I. INTRODUCTION AND SUMMARY**

In accordance with Commission rules, Nemont, MVC, RTC and Citizens have filed a joint petition for expedited waivers to permit Citizens to sell the assets of its Williston, North Dakota exchange (approximately 9,349 access lines), to MVC and its Alexander and Watford City, North Dakota exchanges (approximately 236 and 1113 access lines respectively) to RTC. The transaction will entail the deletion of the Williston, Alexander and Watford City exchanges from Citizens' North Dakota study area, and the addition of these exchange to the existing study areas of Nemont and RTC.

RTC also seeks a waiver of the Commission's rule section 61.41(c)(2) so that it may continue to be regulated under rate-of-return regulation once the assets of Citizens are acquired. Nemont also seeks waiver of the definition of an average schedule company included in section 69.605(c) of the Commission's rules. Acquiring companies also seek waiver of section 69.3(e)(11) of the Commission's rules concerning participation in the NECA carrier common line tariff, as necessary.

## **II. THE COMMISSION SHOULD WAIVE ITS "ALL OR NOTHING" RULE.**

RTC seeks waiver of the "all or nothing" rule in section 61.41(c) of the Commission's rules to allow it to remain under rate of return regulation. The Commission's rules require that any non-average schedule company, when purchasing a price cap company or a

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<sup>3</sup> *In the Matter of Nemont Telephone Cooperative, Inc., Missouri Valley Communications, Inc., Reservation Telephone Cooperative, and Citizens Telecommunications Company of North Dakota Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix—Glossary of the Commission's Rules and Petition for Waiver of Section 61.41(c)(2) Section 69.3(e)(11) and 69.605(c) of the Commission's Rules.* CC Docket 96-45, DA 02-2857, Public Notice (rel. Oct. 31, 2002).

portion of a price cap company, be subject to price cap regulation.<sup>4</sup> Application of the “All or Nothing” rules would be inconsistent with the public interest.

These regulatory changes are an undue burden for the acquiring companies because the purpose of the "All or Nothing Rule" is not being served in this instance. The Commission intended the rule to apply to "large, publicly-traded firms, that compete daily for sales of non-regulated products and services, in the financial markets, and in the labor markets."<sup>5</sup> Not only in this instance is RTC not a company of the sort targeted by the Commission but small rural companies in general do not fit in this category in any instance. The Commission has reached a similar conclusion and noted the adverse effects of this regulatory structure when applied to small rural companies.<sup>6</sup> Not only should the Commission grant the waiver but also it should consider addressing application of the rule to small rural carriers at any time. The Commission should grant RTC a waiver of the “All or Nothing rule”.

### **III. PETITIONERS REQUEST FOR WAIVER OF AVERAGE SCHEDULE WAIVER SHOULD BE GRANTED.**

Nemont is an average schedule carrier and seeks a waiver of section 69.605(c) of the Commission’s rules to retain its average schedule status after the acquisition of the Century exchanges, which were subject to price cap regulation.

Commission rules define an “average schedule company” as a telephone company participating in average schedule settlements on December 1, 1982, and precludes the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without waiver from the Commission. The Commission has seen fit to grant waiver of section 69.605(c) to numerous other average schedule companies similar in size

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<sup>4</sup> 47 C.F.R. § 61.41(c)(2) and (3). Also known as the “All or Nothing rule”.

<sup>5</sup> *Id.* at.5.

to Nemont seeking to remain regulated under average schedules after acquiring comparable numbers of access lines from price cap carrier.

In its decision on *Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.*, the Commission outlined special circumstances for justifying waivers, including ensuring a smooth settlement process when average schedule companies acquire another company and the combined companies are going to merge into one average schedule study area.<sup>7</sup>

The petitioners proposed transfer satisfies the same special circumstances as those found to justify prior “smooth settlement process” category section 69.605(c) waivers. MVC is seeking to acquire a small, rural exchange and join the existing Nemont North Dakota study area, and Nemont is an existing and established average schedule company. Application of section 69.605(c) to the proposed transaction could have the effect of requiring Nemont to convert its existing exchanges from average schedule status to cost-based settlements and require the companies to perform cost studies. Nemont estimated that it would cost approximately \$62,000 in annual recurring cost and \$25,000 in non-recurring cost to perform such cost studies. This conversion would be unduly burdensome on Nemont and MVC. The increase in costs associated with converting to price cap regulation would drain resources that heretofore were reinvested into the network and improving service to customers. Granting Nemont and MVC a waiver of section 69.605(c) of the Commission’s rules is in the public interest.

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<sup>6</sup> See, Joint Petition at 5.

<sup>7</sup> *In the Matter of Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.*, CC Docket No. 96-45, DA 00-2473 (Acc. Pol. Div., rel. Nov. 3, 2000), ¶ 13.

#### **IV. PETITIONERS REQUEST FOR WAIVER OF SECTION 69.3(E)(11) SHOULD BE GRANTED.**

The Acquiring Companies also seek waiver of Section 69.3(E)(11) of the FCC's rules so that they may continue to utilize NECA as its tariff pool administrator. Strict application of § 69.3(e)(11) is an unnecessary administrative and financial burden for small carriers. If the rule is applied, the acquiring companies may not be able to participate in the NECA common line tariff pool. They may only rejoin the pool after the consummation of the acquisition transaction which might be the next annual access tariff filing date. If this is the case then the acquiring companies would have to file interstate tariffs independently which would impose a significant burden upon the companies because of the costs of such an undertaking. To relieve undue and unnecessary costs the Commission should waive 69.3(e)(11) as applied to Petitioners.

#### **V. THE COMMISSION SHOULD WAIVE ITS "STUDY AREA" DEFINITION.**

NTCA believes the Commission's Study Area freeze should be waived. Part 36 of the Commission's rules, "freezes" the definition of "study area" to the boundaries, which were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that LECs would set up high cost exchanges within their territories as separate study areas to maximize high cost support.<sup>8</sup> Recognizing that the freeze might not be appropriate in all circumstances, the Commission established a three-pronged test for deciding whether study areas should be waived. The Commission may grant waiver requests if 1) the change will not

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<sup>8</sup> *In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 (Dec. 12, 1984).

adversely affect the USF support program; 2) the state commission having regulatory authority does not object to the change; and 3) the public interest supports grant of the waiver.<sup>9</sup>

As stated in the Joint Petition, the Commission's three-pronged test is satisfied by the transactions of Petitioners. The transactions will have no adverse impact on the universal service program. Under Section 54.305(a) of the Commission's rules, carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the sale.<sup>10</sup> Therefore Nemont, MVC, and Reservation will receive the same amount of support that Citizens currently receives in these exchanges and this will not adversely impact universal service. In addition the acquiring companies, MVC and RTC have each filed an application for a certificate of public convenience and necessity with the North Dakota Public Commission. Both companies also have a proven record of providing quality service and facilities to residents and businesses in rural North Dakota, making it in the public interest to maintain high quality telecommunications providers. Therefore, the Commission should grant Petitioners request for waiver.

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<sup>9</sup> *In the Matter of US West Communications Inc. and Eagle Telecommunications Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Memorandum Opinion and Order*, 10, FCC Rcd 1771, 1772 (1995).

<sup>10</sup> 47 CFR § 54.305

## VI. CONCLUSION

Petitioners have demonstrated good cause for the grant of requested waivers. Nemont, MVC, and RTC are established existing rate of return carriers with proven records of providing service to rural areas. It is in the best interest of the Commission to remain consistent with previous decisions recognizing the need to minimize regulatory and administrative burdens upon small rural local exchange carriers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
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December 2, 2002

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 02-2857 was served on this 2nd day of December 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

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